

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

APPLE, INC.,  
AMERICAN AIRLINES, INC.,  
BLOOMBERG, L.P.,  
CONTINENTAL AIRLINES, INC.,  
UNITED PARCEL SERVICE, INC.,

Defendants.

CASE NO. 6:08-CV-447-LED

**JURY TRIAL DEMANDED**

**PLAINTIFF AND COUNTERDEFENDANT EMG TECHNOLOGY LLC'S  
ANSWER TO COUNTERCLAIM OF UNITED PARCEL SERVICE, INC.**

Pursuant to Fed . R. Civ. P. 8(b), EMG Technology, LLC ("EMG") hereby responds to the Counterclaim of United Parcel Service, Inc. ("UPS") as follows. Unless specifically admitted, EMG generally denies all allegations in the Counterclaim. EMG expressly denies that UPS is entitled to any relief whatsoever in connection with its Counterclaim, including, but not limited to, all relief requested by UPS in its Prayer for Relief.

**NATURE AND BASIS OF ACTION**

1. EMG admits the allegations contained in Paragraph 1.

**PARTIES, JURISDICTION AND VENUE**

2. EMG admits the allegations contained in Paragraph 2.
3. EMG admits the allegations contained in Paragraph 3.
4. EMG admits the allegations contained in Paragraph 4.
5. EMG admits the allegations contained in Paragraph 5.

## COUNT I

### **DECLARATION OF NON-INFRINGEMENT OF THE '196 AND '845 PATENTS**

6. EMG incorporates by reference its responses to Paragraphs 1-5 above as though fully set forth herein.

7. EMG admits that an actual controversy currently exists between EMG and UPS regarding the infringement of the '196 and '845 patents. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 7.

8. EMG denies the allegations contained in Paragraph 8.

## COUNT II

### **DECLARATION OF INVALIDITY OF THE '196 AND '845 PATENTS**

9. EMG incorporates by reference its responses to Paragraphs 1-8 above as though fully set forth herein.

10. EMG admits that an actual controversy currently exists between EMG and UPS regarding the validity of the '196 and '845 patents. Except as expressly admitted, EMG denies the remaining allegations contained in Paragraph 10.

11. EMG denies the allegations contained in Paragraph 11.

### **PRAYER FOR RELIEF**

WHEREFORE, EMG prays that this Court enter judgment against UPS as follows:

- (a) Dismissing UPS's Counterclaim with prejudice and ordering that UPS is entitled to no recovery on the Counterclaim;
- (b) Ordering that this is an exceptional case pursuant to 35 U.S.C. § 285, and awarding EMG its attorney fees and full costs of suit; and
- (c) Awarding EMG such other and further relief as this Court deems just and appropriate.

Dated: July 23, 2009

**OF COUNSEL:**

Jeffer, Mangels, Butler and Marmaro, LLP

Stanley M. Gibson  
(Cal. Bar No. 162329)  
[smg@jmbm.com](mailto:smg@jmbm.com)

Joshua S. Hodas, Ph.D.  
(Cal. Bar No. 250812)  
[jsh@jmbm.com](mailto:jsh@jmbm.com)

1900 Avenue of the Stars, Seventh Floor  
Los Angeles, CA 90067  
Telephone: (310) 203-8080  
Facsimile: (310) 203-0567

Manatt, Phelps & Phillips, LLP

Robert D. Becker  
(Cal. Bar No. 160648)  
[rbecker@manatt.com](mailto:rbecker@manatt.com)

Shawn G. Hansen  
(Cal. Bar No. 197033)  
[shansen@manatt.com](mailto:shansen@manatt.com)

1001 Page Mill Road, Building 2  
Palo Alto, CA 94304  
Telephone: (650) 812-1300  
Facsimile: (650) 213-0260

Respectfully Submitted,

By: /s/ Charles Ainsworth  
Charles Ainsworth  
State Bar No. 00783521  
Robert Christopher Bunt  
State Bar No. 00787165  
PARKER, BUNT & AINSWORTH, P.C.  
100 E. Ferguson, Suite 1114  
Tyler, TX 75702  
903/531-3535  
903/533-9687  
E-mail: [charley@pbatyler.com](mailto:charley@pbatyler.com)  
E-mail: [rcbunt@pbatyler.com](mailto:rcbunt@pbatyler.com)

ATTORNEYS FOR PLAINTIFF,  
EMG TECHNOLOGY, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record, who are deemed to have consented to electronic service, are being served this 23<sup>th</sup> day of July, 2009, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Charles Ainsworth  
CHARLES AINSWORTH